(1)
Supreme Court, U.S.
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No.

In the Supreme Court of the United States

SOTIR STEFANI,
Petitioner,

v.

JOHN ASHCROFT, U. S. Attorney General,
Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether an asylum claim based on fear of persecution on grounds recognized under asylum law is in any way diminished where the claimant also has other reasons, not so recognized, for not wanting to return to his or her country?

RULE 29. 6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner states that no parent company or publicly held company that owns 10 percent or more of the corporation's stock is involved or implicated in this matter.

TABLE OF CONTENTS

Page

QUESTION PRESENTED. i

RULE 29.6 STATEMENT. ii

TABLE OF AUTHORITIES. iv

OPINIONS BELOW. 1

JURISDICTION. 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED. 1

STATEMENT. 2

I. Petitioner's persecution claim. 2

II. Decisions below 4

REASONS FOR GRANTING THE PETITION. 6

CONCLUSION. 9

APPENDIX A. A-1

APENDIX B. A-3

APPENDIX C. A-5

TABLE OF AUTHORITIES

Page

JUDICIAL DECISIONS:

Amanfi v. Ashcroft, 328 F.3d 719 (3rd Cir. 2003). 6

Borja v. INS, 175 F.3d 732 (9th Cir. 1999). 6

Bridges v. Wixon, 326 U.S. 135 (1945). 8

Davila-Bardales v. INS, 27 F.3d 1 (1st Cir. 1994). 7

El Moraghy v. Ashcroft, 331 F.3d 195 (1st Cir. 2003). 5

Fong Haw Tan v. Phelan, 333 U.S. 6 (1948). 8

Girma v. INS, 283 F.3d 664 (5th Cir. 2002). 6

INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). 9

INS v. Yang, 519 U.S. 26 (1996). 7

Marku v. Ashcroft, 380 F.3(982 (6th Cir. 2004). 6

Osorio v. INS, 18 F.3d 1017 (2nd Cir 1994). 6

Ross v. Moffitt, 417 U.S. 600 (1974). 8

Thompson v. City of Louisville, 362 U.S. 199 (1960). . . .8

Washinqton v. United States, 357 U.S. 348 (1958). 8

Page

Yatskin v. INS, 255 F.3d 5 (1st Cir. 2001). 5

****

ADMINISTRATIVE DECISIONS:

Matter of S-P-, 21 I&N Dec. 486 (BIA 1996). 6

****

STATUTORY PROVISIONS:

8 U.S.C. Sect. 1101(a)(42). 1

8 U.S.C. Sect. 1158. 2

28 U.S.C. Sect. 1254. 1

COURT RULES:

SUP. CT. R. 13. 1

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (Appendix, infra, at pages 1-2 ("App. A-1 - A-2")) is unreported. The opinion of the Board of Immigration Appeals (App. A-3 - A-4) is unreported. The opinion of the Immigration Judge (App. A-5 - A- 14) is unreported.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on September 17, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. Sect. 1254 and SUP. CT. R. 13.

STATUTES INVOLVED

This case involves 8 U.S.C. Sect. 1101(a)(42), which provides in relevant part that:

> The term "refugee" means [...] any person who is outside any country of such person's nationality [...] and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion[...].

STATEMENT

I. Petitioner's Persecution Claim

In proceedings below, Petitioner asked for relief, inter alia, in the form of asylum, which, under 8 U.S.C. Sect. 1158, is available to individuals meeting the definition of "refugee" (see above-cited statutory text), due to the persecution he fears in his home country.

Petitioner Sotir Stefani is a native and citizen of Albania, who arrived in the U.S. on January 28, 1999. Certified Administrative Record ("A.R."), as filed with the U. S. First Circuit Court of Appeals, at 134,175. He had been a member of the Democratic Party of Albania, which was opposed to the Albanian socialists. A.R. 169-70. After joining in 1991, he held various positions within the party, including one where he supervised proceedings at a local "electoral center." A.R. 171,258,299,302. In the 1996 elections, Petitioner got into a dispute with a group of other party members, who argued that the Democratic Party had to win at all costs, including even bloodshed if necessary; Petitioner protested against these extremists, offered his resignation, and was demoted to a position of little authority as a result. A.R. 173,259,299.

As a result of this principled stand, Petitioner began to fear reprisal by various "mafia" or "paramilitary" elements within the Democratic Party ranks. A.R. 175-78,260. These groups had thrown the 1996 election to the party, and were also used to stifle internal party dissent. A.R. 175. By 1997, Petitioner had become so fearful that he had a bullet-proof front door installed for his apartment. A.R.

177,260,300. He made sure to be home before dark, and prayed constantly for protection. A.R. 177.

In Spring or Summer 1997, he got into trouble with one Fatim Kochari, a party official, whom he had denounced for having converted a children's school into a residence for his own family. A.R. 178-79. Kochari threatened to use his "automatic gun" against him. A.R. 180,261. One late night in September 1997, Petitioner was awakened by a scream in his building; from his balcony he saw a group of masked men, one of whom showed his face and fired a machine gun. A.R. 180. He recognized this individual as "someone that the democratic party used for its dirty jobs." A.R. 181. The next morning this man's mask was lying in front of Petitioner's door, and Petitioner took this as a "very serious threat." A.R. 182,262.

In 1998, Petitioner was threatened at gunpoint in the local City Hall by Petrit Sula, whose brother was a notorious criminal serving the Democratic Party. A.R. 196,187-88, 302. This was in retaliation for his denunciation two days earlier of an attempted Democratic Party coup d'etat, which had interrupted the funeral of a well-known Albanian public figure. A.R. 301. Petitioner stated he would have been killed then and there, but for a friend's having intruded on the scene. A.R. 263-64,303.

Petitioner's sister and grandfather also suffered past harm in Albania for political reasons. A.R. 201. The grandfather had supported the Allies during World War II, and the sister had opposed the former Communist regime. A.R. 202. Another sister and some uncles suffered political problems as well. A.R. 201. The sister who opposed the Communists

was sentenced in 1974 to six years in prison, and served four and one-half years. A.R. 206-07. In 1971, an uncle was sentenced to six years' imprisonment and served the entire sentence, apparently also for opposing the former Communist regime. A.R. 208.

Petitioner fled to the U.S. in January 1999, using another individual's passport which he had bought for one thousand U.S. dollars. A.R. 200,232,304. Upon arrival in the U.S., he revealed his true identity and asked for sanctuary. A.R. 304. On the day he arrived, Petitioner was given a "credible fear" interview under 8 CFR Sect. 235.3(b)(4); having been determined to in fact have "credible fear," he was paroled into the country for asylum proceedings with the IJ. A.R. 221-36.

Petitioner stated that in addition to his fear of political persecution there was a second reason he left his country: his fear of persecution because he was born with a deformed penis and was impotent as a result (the medical term for this condition is "hypospadias"). A.R. 187,255,264-65,303. Petitioner hoped that he would receive treatment in the U.S. that was denied him in Albania. A.R. 264.

II. Decisions Below

Petitioner's asylum claim was initially denied by an Immigration Judge ("IJ"), who concluded that his fear was based mainly on grounds not recognized under asylum law: e. g., the general lawlessness in Albania and the perception

that anyone who had lived in America would have money and thus be a target for robbery. App. A- . She ruled further that Petitioner's medical condition did not constitute a recognized ground for relief under U.S. asylum law, and concluded that because he himself had at one point characterized this as the "first" reason he feared return, and his political problems the "second" reason, said second reason should therefore be discounted or scanted. App. A- .

The Board of Immigration Appeals ("BIA") upheld the IJ's decision, reaching the same "conclusions ... articulated in ... her decision" without further analysis. App. A- . While Petitioner had submitted further evidence on appeal, including documentary corroboration of his own past political activities as well as updated background materials, the BIA held its review was limited to the record as constituted in proceedings before the IJ. Id.

The Court of Appeals for the First Circuit also concluded Petitioner did not merit asylum, stating, without further discussion, as follows:

> On the basis of the administrative record, including a transcript of the hearings before, and the oral decision of, the Immigration Judge, we conclude that petitioner has not provided evidence so compelling that no reasonable factfinder could have failed to find him eligible for the relief requested. Yatskin v. INS, 255 F.3d 5, 9 (1st Cir. 2001). Petitioner did not carry his burden of demonstrating eligibility for asylum either by demonstrating past persecution or a well-founded fear of future persecution. See El Moraghy v. Ashcroft, 331 F.3d 195, 202 (1st Cir. 2003).

App. A- .

REASONS FOR GRANTING THE PETITION

I. This Case Presents an Opportunity to Promote the Uniformity of Justice Nationwide by Correcting the First Circuit's Refusal to Join Many of its Sister Circuits in Adopting the "Mixed Motive" Standard of Asylum Analysis.

"Mixed Motive" asylum analysis has been recognized in at least five Circuit Courts of Appeal, as well as by the BIA itself. See, e.g., Marku v. Ashcroft, 380 F.3d 982, 988 n.10 (6th Cir. 2004); Amanfi v. Ashcroft, 328 F.3d 719, 727 (3rd Cir. 2003); Girma v. INS, 283 F.3d 664, 667 (5th Cir. 2002); Borja v. INS, 175 F.3d 732, 736 (9th Cir. 1999); Osorio v. INS, 18 F.3d 1017, 1028 (2nd Cir 1994); and Matter of S-P-, 21 I&N Dec. 486, 489 (BIA 1996).

In Girma, the Fifth Circuit set forth this doctrine's basic tenets:

> Under a mixed motive analysis, an applicant need not show past persecution or fear of future persecution "solely on account of" a protected ground. Stated another way, "the presence of possible mixed motives need not [necessarily] defeat an asylum claim." An applicant need only show that one of the persecutor's motives falls within a statutorily protected ground. Furthermore, an applicant is not required to provide direct proof of her persecutor's motives but rather some evidence of it, direct or circumstantial.

283 F.3d at 667 (italics in original; citations omitted).

By contrast, the IJ stated as follows in denying Petitioner relief:

> The respondent claims that he was specifically targeted because of his standing up for honest and fair elections and for other decrying (sic) corruption in the political process. (...) However, it does not appear that it is necessarily on account of a political opinion but rather greed, robbery, and coercion seems (sic) to be the primary factors here.

App. A- . The IJ also, as noted above, found great significance in the fact that Petitioner at one point stated that his medical condition was the "first" reason he wanted asylum, and his political problems were the "second."

By requiring proof that politics was "necessarily" the reason for Petitioner's fear, and/or that it be the "first" reason, the IJ erred as a matter of law, clearly violating the BIA's own announced "mixed motive" doctrine. Yet the BIA did nothing to correct this mistake in the present matter. Similarly, the First Circuit panel, regardless of any unstated opinion it may have had of said doctrine (and not having in the present matter or previously rejected said doctrine) erred by failing to enforce the caselaw rule requiring the BIA to adhere to its own precedent. Davila-Bardales v. INS, 27 F.3d 1, 5-6 (1st Cir. 1994); see also INS v. Yang, 519 U.S. 26, 32 (1996) .

This Court should now exercise its certiorari jurisdic-

tion to bring the First Circuit in line with its sister Circuit Courts in recognizing the "mixed motive" doctrine, and to ensure uniform nationwide application of this eminently logical and fair doctrine in all Circuit Courts.

II. The Denial of Petitioner's Asylum Claim was Clearly Erroneous, and This Court Should Overturn Said Decision, Given the Lethal Danger Threatened by Petitioner's Removal.

As just stated, the First Circuit's refusal to enforce the BIA's own "mixed motive" doctrine was erroneous. The First Circuit erred further in refusing to engage in any analysis whatsoever of the facts or applicable law in the present matter. As set forth above, its opinion cites to two cases setting forth schemes of analysis, but fails to explain why Petitioner's claim must fail under those schemes.

This Court is, of course, not principally concerned with correcting "mere" errors made by the courts below. Ross v. Moffitt, 417 U.S. 600, 616-17 (1974). On occasion, however, it does so in the interest of avoiding a grave miscarriage of justice. See, e. g., Thompson v. City of Louisville, 362 U.S. 199 (1960), and Washington v. United States, 357 U.S. 348 (1958).

This Court has long recognized the uniquely severe hardships facing individuals threatened with deportation. Fong Haw Tan v. Phelan, 333 U.S. 6, 10 (1948); Bridges v. Wixon, 326 U.S. 135, 154 (1945). It has also stated specifically that

> Deportation is a harsh measure; it is all the more

> replete with danger when an alien makes a claim that he or she will be subject to persecution if forced to return to his or her home country.

INS v. Cardoza-Fonseca, 480 U.S. 421, 448 (1987).

It is submitted that since the present matter concerns a credible persecution claim that has been denied on clearly erroneous grounds, this Court should intervene in order to prevent a grave miscarriage of justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Attorney of Record for
Petitioner Sotir Stefani

APPENDIX A

United States Court of Appeals
For the First Circuit

No. 03-2145

SOTIR STEFANI,
Petitioner,

v.

JOHN ASHCROFT, Attorney General,
Respondent.

Before

Campbell, Senior Circuit Judge,
Torruella and Selya, Circuit Judges.

JUDGMENT

Entered: September 17, 2004

The Board of Immigration Appeals affirmed the decision of the Immigration Judge denying petitioner's application for asylum, withholding of deportation and protection under the Convention Against Torture, and dismissed his appeal. On the basis of the administrative record, including a transcript of the hearings before, and the oral decision of, the Immigration Judge, we conclude that petitioner has not provided evidence so compelling that no reasonable factfinder could have failed to find him eligible for the relief requested. Yatskin v. INS, 255 F.3d 5, 9 (1st Cir. 2001). Petitioner did

not carry his burden of demonstrating eligibility for asylum either by demonstrating past persecution or a well-founded fear of persecution. See El Moraghy v. Ashcroft, 331 F.3d 195, 202 (1st Cir. 2003). Therefore, withholding of deportation was also unavailable. Finally, having testified that he had not been tortured and did not expect that he would be if he returned to Albania, petitioner was not eligible for relief under the Convention Against Torture.

Affirmed. 1st Cir. R. 27 (c) .

By the Court:

RICHARD CUSHING DONOVAN

Richard Cushing Donovan, Clerk.

cc:

Thomas P. Adams
Valarie Dickson
Michael J. Sullivan, USA
Neil Cashman, Esq.
Thomas W. Hussey, Esq.
Michael S. Raab, Esq.
Teal Luthy Miller

APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review
Decision of the Board of Immigration Appeals

File: A76 962 282 - Boston
In re: SOTlR STBFANI a.k.a.lbrahim Xhengo

Date: JUL 22 2003

IN REMOVAL PROCEEDINGS

APPEAL
ON BEHALF OF RESPONDENT: Saher Macarius. Esquire

ORDER.:

PER CURIAM. We affirm the decision of the Immigration Judge. *See Matter of Burbano,* 20 I&N Dec. 872. 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"). The respondent on appeal proffers additional evidence to support his asylum application. This Board is an appellate body whose function is to review, not to create, a record. *Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984). We do not consider evidence submitted for the first time on appeal, but will instead adjudicate the appeal on the basis of the record of proceeding before the Immigration Judge as that is the record which the Board reviews. *See Matter of C-,* 20 I&N Dec. 529, 530. n.2 (BIA 1992);

Matter of Haim, 19 I&N Dec. 641, 643 (BIA 1988). We note, however, that we do not find this newly offered evidence sufficient to warrant reopened proceedings before the Immigration Judge even when considered with the existing evidence of record. The appeal is dismissed.

/s/ illegible
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Boston, Massachusetts

File No. :76-962-282 February 26, 2001

In the Matter of	)	
	)	
SOTIR STEFANI, aka	)	
IBRAHIM XHENGO,	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	

CHARGES: Section 212(a) (6) (C) (i) of the Immigration & Nationality Act - alien who by fraud or wilfully misrepresenting a material fact seeks to procure or has sought to procure or has procured a visa, other documentation or admission into the United States or other benefit provided under this Act.

Section 212(a) (7) (A) (i) (I) of the Immigration & Nationality Act - as amended as an immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act and a valid unexpired passport or other

suitable travel document or document of identity and nationality as required under the regulations issued by the Attorney General under Section 211(a) of the Act.

APPLICATION: Asylum, withholding of removal under Section 241(b) (3) of the Act and relief under Article III of the Convention Against Torture. Voluntary departure pretermitted as respondent is an arriving alien.

ON BEHALF OF RESPONDENT:

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ON BEHALF OF SERVICE:

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ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent herein is a 49-year old single male, native and citizen of Albania. Removal proceedings were instituted against him when the Immigration & Naturalization Service issued a Notice to Appear on February 4th, 1999 and served it upon the respondent on that same date and filed it with the Immigration Court at Boston, Massachusetts on the same date, February 4th, 1999. (Exhibit 1). By way of this document, the Service contends that the respondent is removable under the two charges stated above.

The respondent, when he was pro se, admitted the truth of the factual allegations 1 through 6 in the charging document. Based on the other evidence of record, as well as the statements and testimony of the respondent, I find that removability has been sustained by evidence that is clear and convincing on both of the charges stated above.

The respondent has declined to name a country. The Court notes that the respondent is an arriving alien therefore, the country to which the alien may be removed is governed under Section 241(b) (1) of the Act. Generally, that country would be the country in which the alien bordered the vessel or aircraft on which the alien arrived in the United States. The respondent filed an application for asylum form I-589 within one year of his arrival in the United States (Exhibit 3). Prior to filing the application the respondent was given the notice of privilege of counsel and consequences of knowingly filing a frivolous application for asylum (Exhibit 2). The 1-589 is also considered an application for withholding of removal under 241 (b) (3) of the Act and relief under Article III of the Convention Against Torture. All of those forms of relief will be considered as well. The application was sent to the Department of State for an advisory opinion, Group

Exhibit 5. Group exhibit 4 is the transmittal. The respondent was given a copy of his application that he filed but he was pro se at that time. The Department of State replied, group exhibit 5. They sent a copy of the profiles for asylum for Albania dated November 1998. The respondent began testimony on one of two grounds on which he claims his application. The second ground involved the medical condition of the respondent and the respondent did not wish to testify further concerning the details of this medical condition. Respondent's counsel, however, claims that due to this condition he is a member of a particular social group. The respondent in lieu of his further testimony on his medical condition agreed that the record of determination credible fear work sheet should be introduced. Exhibit 13. That document contains information and answers to questions that were put to the respondent when he first arrived in the United States. The interview was conducted with an Albanian interpreter. We also have a letter by a physician discussing the condition and that is at exhibit 11. The condition technically is known as Hypospadias and it involves a congenital abnormality of genitalia. Respondent has also suffered a heart attack. We continued this case on several occasions. First, because the respondent had a heart attack and secondly for the counsel which he had obtained to prepare. I note that it is now the end of February 2001. The respondent arrived in the United States at the end of January 1999 and has been in the United States for some time since his application was actually heard. But these requests were because of the respondent.

The respondent testified on his behalf. He was the only witness. The respondent testified that he was a member of the democratic party and he has presented a letter to that effect, exhibit 15. I note that there is little foundation for this

letter and that it's not been authenticated but the Service did not oppose it being presented into the record as a document which the respondent requested and which was sent to him. The respondent submitted an updated statement in exhibit 10. The respondent testified that he was elected secretary the local democratic party in his community. He stated that he took this position in April of 1992 and that the elections in 1992 went smoothly without any problems. See respondent's declaration at exhibit 10, paragraph numbers 10 and 11. The respondent, however, stated that he heard persons within the democratic party in meetings prior to the May 26th, 1996 elections indicating that they would win the election by any means possible. The respondent was upset about this statement. He was a voting monitor and he observed certain persons coming in and basically ballot stuffing with extra ballots. He protested against this and he went home. The respondent also testifies to a time in which he was threatened. He believes at gunpoint. This appears to be by mafia persons. The respondent first testified that he was fired from his job. He recanted somewhat saying that he had friends and he was able to keep his job.

The respondent has lived in Albania all of his life and he certainly present during a turmoiltous time in the history of that country. The country deteriorated economically to a great extent during the pyramid scheme scandal and in the period in the Spring of 1997 it does appear that criminal element was beginning to obtain the upperhand in much of the goings on in Albania. The respondent claims that he was specifically targeted because of his standing up for honest and fair elections and for other decrying corruption in the political process. The time that he was threatened was when he was at his work, was the chief of the welfare department,

it appears that the respondent believed his son was a dangerous person who belonged to one of the mafia groups who supported the extremist party and the person threatened him. However, it does not appear that it is necessarily on account of a political opinion but rather greed, robbery, and coercion seems to be the primary factors here. The situation that the respondent described as far as a woman screaming in his apartment one evening, this was apparently a robbery. The respondent claims that they were members of the democratic party. There is little foundation for that. He states that he recognized one of the masked persons whose mask had fallen down and he believed that he recognized him as a 16 or 17 year old son of someone who was sent out to do dirty work for the party. Again, this is very little foundation to show that this robbery was anything other than a robbery. This was certainly unfortunate. There is not a ground of asylum. He say that this person that fired at him was a former student from the high school where he worked. The respondent claims that the police could not protect him although it does not appear that he ever went to the police.

In assessing the respondent's creditibility I do find the respondent to be somewhat nervous in his testimony. He, in the opinion of this Court does seem to exaggerate. For example, he indicated that he was probably the person who slept less in his entire city because he was so afraid. Certainly, events can trigger different reactions in different persons and this respondent does seem to have been have been generally frightened. I believe, however, that the respondent's seeing of these events of being a very frightened person may tend to exaggerate. It does not, to this Court, that the respondent was specifically targeted on account of one of the five statutory grounds. He may have been threatened for some other motives such

as greed, threat of robbery, but it does not appear that it was on account of of one of the five statutory grounds. Even if it were on account of one of the five statutory grounds to wit political opinion, or imputed political opinion, it does not appear that the harm that was suffered constitutes persecution or a well founded fear of persecution. It appears that this was the general situation in Albania at that time and merely difficult country conditions occurring throughout the country cannot in and of themselves constitute a ground of asylum. Further, in the testimony, respondent's creditibility I must say that I do have some difficulty with his creditibility. The respondent, through an Albanian interpreter, when he first arrived in the United States indicated that he came to the United States for two reasons. The first reason he gave was that he wanted to create a family. He gave the information concerning his medical condition, and that basically he wasn't able to have children. He was asked if this was why he came to the United States and he indicated yes this is the first reason. The second reason was that where he works, the State is no longer a State. There's no protection. He stated that he works for the government, something can happen to me. did not like what was happening in his country. He was asked what would happen to him. He stated that presumably if he returned he stated I paid money for a passport and came to the United States. If I came back they will think I have more money and may cut my head. The easy thing to do in Albania is to kill for money. The next question, why do you think they would kill you if you return to Albania, answer if I came back they will say "he probably did not like it there and they may kill me". Again, there may well be a phenomenon in certain countries wherever a person is known to have returned to the United States that person may presume to have money. That person may be targeted for

robbery on the theory that you follow the money. It does not appear, however, that the respondent when he first came to the United States that he had any well founded fear of persecution on account of one of the five statutory grounds. Further, the respondent's statement that he made when he first came to the United States are at variance with his testimony here and this leads the Court to believe that the respondent has certainly overly exaggerated the situation in his country before this Court and the reason why he was threatened, if indeed he were threatened. Further, the respondent was given an opportunity to explain his answer as to whether or not any member of his family was involved in politics. First, he said that he considered only his mother and he as family because his two sisters were married, that even so when asked why he said that he said that he had he or none of his family had been involved in politics, he indicated he did not understand the question. The Court has some difficulty with that explanation and I did not find it entirely credible.

Further, again at page 5 of his question, what do you think will happen if you return to your home country, if I return the mafia will find out and ask why I came back. They may try to make me one of them or destroy me. The respondent was also asked if he had any problems with the government of his country and he answered no in his testimony and he also answered-no in his question. The respondent appears to be afraid of persons whom the government cannot control. The Government may not be able to control the mafia but it appears that they cannot control their robbing and thievery. This is not a matter of on account of the five statutory grounds.

The respondent has also indicated in his testimony

that he has not been tortured in the past and it is not likely that he will be tortured in the future. As to the respondent's second ground, membership in a particular social group, this Court did not find that person suffering from this kind of condition constitute a particular social group. Although this does appear to be an area of some embarrassment, maybe even shame, on the part of the respondent, there'd need be neither, but he does appear to have some embarrassment and shame in describing his dysfunction. While unfortunate, again, asylum is not meant to cure every ill that might befall a person. The respondent did seek medical help in his country. Apparently his physician told him not to tell people about his condition. But on the basis of the statement of the respondent, the respondent's fear that if it became known, he would be ridiculed or harmed in some way is speculation at this point and I find that it does not constitute one of the five grounds. Further, because of speculation there does not appear to have been any persecution or well founded fear of persecution. On the whole the Court finds the respondent is not a credible witness for the reasons stated above.

The Court finds that the respondent has not met his burden for asylum under either ground because the Court takes into consideration on asylum INS v. Elias-Zacarias, INS v. Cardoza-Fonseca, 1st Circuit case on social group Gabriel Michael v. INS, lead cases on asylum Matter of Mogharrabi, Matter of Acosta, Matter of S-P-, Matter of H-, Matter of Chen, Matter of O-D, on the issue of fraudulent documents. Matter of Kula, on the issue of fraud documents and other lead cases.

I note on the issue of identity the respondent didn't give what appears to be his true name at the time of the inter-

view. Although he arrived in the United States with a photo substituted passport, the respondent claims that he had lawful permanent residence.

Because the respondent cannot meet the more generous well founded fear standard for asylum, he could not meet the more stringent standard for withholding of removal under 241(b) (3), INS v. Stevic.

The respondent does not appear to have been tortured in the past by the government nor does it appear likely that he would be tortured in the future by the government because of the grounds that he raises.

ORDER

The respondent's application for asylum, withholding of removal under 241(b)(3) and relief under Article III of the Convention Against Torture be and the same are hereby denied.

IT IS FURTHER ORDERED that the respondent be removed and deported to the country as determined under Section 241(b) (1) of the Act pursuant to the two charges or removability in his Notice to Appear.

_____

PATRICIA SHEPPARD
U.S. Imigration Judge